Supreme Court, U.S.
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No. 98-1863

In The

# Supreme Court of the United States

VIRGINIA EARLY RIGGAN,

*Petitioner,*

v.

R.W. MOORE EQUIPMENT COMPANY,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit**

## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Did the Fourth Circuit Court of Appeals correctly decide that the United States District Court for the Eastern District of North Carolina, Honorable W. Earl Britt, Judge Presiding, was correct in denying the Plaintiff's Motion for a New Trial or Judgment Notwithstanding the Verdict after a jury verdict in favor of the defendant?

## PARTIES TO THE PROCEEDING

The plaintiff is Virginia Early Riggan, who is a citizen and resident of Raleigh, Wake County, North Carolina, and the defendant is R.W. Moore Equipment Company, which is a North Carolina corporation in good standing with its office and principal place of business in Garner, Wake County, North Carolina.

## TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

PARTIES TO THE PROCEEDING ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

STATEMENT OF THE CASE ..... 1

SUMMARY OF THE ARGUMENT ..... 2

ARGUMENT ..... 2

CONCLUSION ..... 4

# TABLE OF AUTHORITIES

Page

CASES

*Sahadi v. Reynolds Chemical*, 636 F.2d 1116 (6th Circuit, 1980) ..... 2

## STATEMENT OF THE CASE

On her age discrimination claim, the plaintiff testified that Mr. Moore, President of the defendant, and John Meacham, Comptroller of the defendant, told her in the year before her dismissal that she could be dismissed and replaced with a younger worker. They testified that they did not say that, and the jury believed their testimony and returned a verdict for the defendant.

The plaintiff presented the testimony of four persons other than herself: Linda Brobson, David Hayes, Corbett Hall and Marie Sealey. Ms. Brobson attempted to claim that her employment had been terminated because of age discrimination, but she admitted during her testimony that her employment was terminated because she could not get her work orders done and could not meet deadlines. She testified that at the time of the termination of her employment she was fifty to seventy work orders behind which represents at least one month. David Hayes attempted to claim that his employment was terminated because of age discrimination, but he admitted that he was discharged because of conflict between himself and other employees and on one occasion he had a shouting match with a customer. He admitted that Mr. Moore had helped him to secure counseling to deal with his personal problem. Corbett Hall did not testify that his employment was terminated because of age discrimination and he testified that he voluntarily left the Company. Marie Sealey testified that she voluntarily left the Company because of conflict among various employees of the company. Ms. Sealey, also, testified that Judy Spurrier, a former employee of the Company, quit her employment because of having to deal with the plaintiff.

The defendant presented numerous witnesses who testified about the unpleasant and disruptive comments and acts of the plaintiff toward them and other employees. Most importantly, the defendant presented Terry L. Nichols and Barbara Lane as witnesses. Both of these women are former employees of the defendant and they each testified that they voluntarily terminated their employment with the defendant because it was so unpleasant and disruptive to have to deal with the plaintiff in their situation.

On the plaintiff's sex discrimination claim, the plaintiff's only evidence to support sex discrimination was that she was replaced by a male. That does not make a *prima facie* case. *Sahadi v. Reynolds Chemical*, 636 F.2d 1116 (6th Circuit, 1980).

## SUMMARY OF THE ARGUMENT

The jury returned a verdict of no age discrimination or sex discrimination. On her Motion for a New Trial or Judgment Notwithstanding the Verdict, the plaintiff asked Judge Britt to overrule the jury. He declined to do this, and the Fourth Circuit Court of Appeals affirmed his decision.

## ARGUMENT

The Plaintiff received a fair trial on her claims of age discrimination and sex discrimination. The jury chose not

to believe that she had been discriminated against on the basis of age or sex.

In the Complaint, the plaintiff did not raise or state a claim for relief under the Equal Pay statute. The first time the plaintiff attempted to inject his issue into the case was January 12, 1998, which was less than one month before the trial, when she presented her draft of the Pre-Trial Order to Magistrate Judge Denson in open court. Pre-Trial Order, paragraph I.F.2.

The issue is not mentioned in the Complaint. It did not arise in discovery because the only discovery by plaintiff was to take the deposition of Mr. Moore. This matter was not the subject of even one conversation between counsel for the plaintiff and counsel for the defendant.

The most salient point to surface was the plaintiff's statement in her Informal Brief in the Fourth Circuit, page 3, first full paragraph. At the time of the Pre-Trial Conference, the plaintiff made a demand of $67,000, and the defendant offered a settlement amount based upon the costs of defense. The Plaintiff conferred with her attorney, and she quotes him as saying that he "advised me, 'quote' I had cost R.W. Moore enough money, and that was what I wanted to do, that we were going to court."

The plaintiff has not cited any of the grounds under Rule 10 as being present in this case to support her Petition for Writ of Certiorari. This case is about the

application of contested facts, and the plaintiff complains that the jury did not find facts in support of her cause.

## CONCLUSION

The Fourth Circuit Court of Appeals was correct in affirming the decision of the District Court that the plaintiff's Motion for a New Trial on Judgment Notwithstanding the Verdict should be denied. The defendant – appellee prays this Court that the Petition for Writ of Certiorari of the plaintiff be denied.

This the 15th day of June, 1999.

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